

Amendment No. 1 to SB1936

Johnson  
Signature of Sponsor

**AMEND Senate Bill No. 1936**

**House Bill No. 1763\***

By deleting all of the language after the enacting clause and substituting the following:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding the following as a new part:

47-18-5601. This part shall be known and may be cited as the "True Origin of Goods Act".

47-18-5602. As used in this part, unless the context otherwise requires:

(1) "Audiovisual work" means the electronic or physical embodiment of motion pictures, television programs, video or computer games, or other audiovisual presentations that consist of related images that are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, electronic equipment, a computer program, software, or system, together with accompanying sounds, if any;

(2) "Commercial recording or audiovisual work" means a recording or audiovisual work whose owner, assignee, authorized agent, or licensee has made or intends to make available for sale, rental, performance, or exhibition to the public under license but does not include an excerpt consisting of less than substantially all of a recording or audiovisual work. A recording or audiovisual work may be commercial, regardless of whether a person who electronically disseminates it seeks commercial advantage or private financial gain from that dissemination;

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(3) "Consumer" means any natural person who seeks or acquires by purchase, rent, lease, assignment, award by chance, or other disposition, any goods, services, property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated or any person who purchases or to whom is offered for sale a franchise or distributorship agreement or any similar type of business opportunity;

(4) "Division" means the division of consumer affairs of the department of commerce and insurance;

(5) "Electronic dissemination" means initiating a transmission of, making available, or otherwise offering, a commercial recording or audiovisual work for distribution on the Internet or other digital network, regardless of whether someone else had previously electronically disseminated the same commercial recording or audiovisual work;

(6) "Goods" means any tangible chattels leased, bought, or otherwise obtained for use by an individual primarily for personal, family, or household purposes or a franchise, distributorship agreement, or similar business opportunity;

(7) "Internet" means the global information system that is logically linked together by a globally unique address space based on the Internet Protocol (IP), or its subsequent extension, and is able to support

communications using the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible protocols, and that provides, uses, or makes accessible, either publicly or privately, high level services layered on communications and related infrastructure;

(8) "Location readily accessible" means a place that is conspicuous, not hidden and capable of being reached quickly and easily by the general public. A web page or screen entitled "about", "about us", "contact", "contact us", "home", or "information", or other place on a web site or online service commonly used to display identifying information to consumers, shall be deemed a "location readily accessible" for purposes of this part;

(9) "Online service" means any service available over the Internet, or that connects to the Internet or a wide-area network;

(10) "Person" means a natural person, consumer, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized;

(11) "Physical address" means the mailing address, including a zip code, that details the actual location of a person or entity, but does not include a post office box or email address;

(12) "Recording" means the electronic or physical embodiment of any recorded images, sounds, or images and sounds, but does not include audiovisual works or sounds accompanying audiovisual works;

(13) "Services" means any work, labor, or services including services furnished in connection with the sale or repair of goods or real property or improvements thereto;

(14) "Tennessee Consumer Protection Act" means the Tennessee Consumer Protection Act of 1977, as compiled in part 1 of this chapter and related statutes. Related statutes specifically include any statute that indicates within the law, regulation, or rule that a violation of that law, regulation, or rule is a violation of the Tennessee Consumer Protection Act of 1977;

(15) "Web page" means a location that has a single uniform resource locator or other single location with respect to the Internet; and

(16) "Web site" means a set of related web pages served from a single web domain.

47-18-5603. This part applies to any person who owns or operates a web site or online service dealing in the electronic dissemination of commercial recordings or audiovisual works, directly or indirectly, to one or more consumers or other persons in this state.

47-18-5604.

(a) It shall be unlawful for any person who is subject to this part under § 47-18-5603 to fail to clearly and conspicuously disclose their true and correct name, physical address, and telephone number on their web site or online service in a location readily accessible to users of, or visitors to, the web site or online service.

(b)

(1) If the division cannot, after reasonable investigation, ascertain the information that is required by subsection (a), the attorney general

and reporter, or a district attorney general of a county in which or from which a violation of subsection (a) is suspected to have been made, at the request of the division, and upon reasonable cause, may issue in writing and cause to be served one (1) or more subpoenas requiring the production of the suspected violator's legal name under which such person conducts business, and the person's physical address and telephone number.

(2) A party shall not disclose any information pursuant to a subpoena other than the suspected violator's legal name under which such person conducts business, and the person's physical address and telephone number.

(3) At any time before the return date specified on the subpoena, the person summoned may, in the chancery court of the county in which the person resides or does business, petition for an order modifying or quashing the subpoena, or a prohibition of disclosure by a court.

(4) If no case or proceeding arises from the production of records or other documentation pursuant to this section within a reasonable time after those records or documentation are produced, the attorney general and reporter or district attorney general shall either destroy the records and documentation or return them to the person who produced them.

(5) A subpoena issued under this section may be served by any person who is authorized to serve process under the Tennessee Rules of Civil Procedure and such subpoena shall be served in accordance with such rules.

47-18-5605. In addition to any other remedies, the attorney general and reporter, or a district attorney general of a county in which or from which a violation of this part is

made, may bring an action to enjoin any practice in violation of this part, enforce compliance with this part, and recover the civil penalty and attorney's fees required by § 47-18-5606.

47-18-5606.

(a) If a person is found to be in violation of this part in a civil action, the court shall assess a civil penalty against the offending party in an amount up to two thousand five hundred dollars (\$2,500).

(b) If a person found to be in violation of this part in a civil action fails to comply with any permanent injunction, judgment, or court order compelling compliance with this part, the court shall assess a civil penalty against the offending party in an amount of no less than five thousand dollars (\$5,000) and no more than ten thousand dollars (\$10,000) for each day of non-compliance.

(c) Any civil penalty collected pursuant to this section shall be paid into the general fund of the state. The prevailing party in the cause shall be entitled to necessary expenses and reasonable attorney's fees.

47-18-5607.

(a) A violation of this part constitutes a violation of the Tennessee Consumer Protection Act.

(b) For the purpose of application of the Tennessee Consumer Protection Act, any violation of this part shall be construed to constitute an unfair or deceptive act or practice affecting trade or commerce and subject to the penalties and remedies as provided in the Tennessee Consumer Protection Act, in addition to the penalties and remedies set forth in this part.

(c) If the division has reason to believe that any person has violated this part, the attorney general and reporter, at the request of the division, may institute a proceeding under this chapter.

SECTION 2. This act shall take effect July 1, 2014, the public welfare requiring it.